EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In Re:	
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representatives of THE COMMONWEALTH OF PUERTO RICO, et al, Debtors	No. 17 BK 3283-LTS
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THE BANK OF NEW YORK MELLON, Plaintiff v. PUERTO RICO SALES TAX FINANCING CORPORATION (COFINA), et al, Defendants	Adv. Proc. No. 17-133-LTS in 17 BK 3284-LTS

HEARING

BEFORE THE HONORABLE JUDITH GAIL DEIN
UNITED STATES MAGISTRATE JUDGE

United States District Court
1 Courthouse Way, Courtroom 18
Boston, Massachusetts 02210
August 22, 2017, 1:04 p.m.

DEBRA D. LAJOIE
OFFICIAL COURT REPORTER
United States District Court
1 Courthouse Way, Room 3-209
Boston, MA 02210
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A P P E A R A N C E S:

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MARTIN J. BIENENSTOCK, ESQ., Proskauer Rose LLP, for the Financial Management and Oversight Board for Puerto Rico.

RICHARD LEVIN, ESQ., Jenner & Block LLP, for the Retirees' Committee.

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ROBERT S. BRADY, ESQ., Young, Conaway, Stargatt & Taylor, LLP, for Popular, Inc., Popular Securities, LLC, and Banco Popular of Puerto Rico.

NICHOLAS P. CROWELL, ESQ., Sidley Austin, LLP, for Santander Puerto Rico, Santander Asset Management and Santander Securities.

KYLE J. KIMPLER, ESQ. Paul, Weiss, Rifkind, Wharton & Garrison, LLP, for the Ad Hoc GIO Group.

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22 AUGUST 2017 -- 1:04 P.M.

THE CLERK: The United States District Court for the District of Puerto Rico is now in session on August 22nd, the year 2017, in the matter of In Re: The Financial Oversight and Management Board of Puerto Rico, as representative of the Commonwealth of Puerto Rico, et al, Bankruptcy No. 17-3283-LTS.

THE COURT: Good afternoon, everybody. And as I stated this morning, welcome to the latest seating of the Puerto Rico District Court in Massachusetts, and welcome to our friends in Puerto Rico.

All right. So, we're here on a motion of the Unsecured Creditors' Committee for Bankruptcy Rule 2004 examination. Who's arguing?

MR. DESPINS: I am, Your Honor. Good afternoon, Your Honor. Luc Despins with Paul Hastings, Counsel for the Creditors' Committee.

Your Honor, we're here on our motion, 2004 motion, for documentary production from three entities, Banco Popular, Santander and GDB. And this is a very important motion, Your Honor, very important not because it has been on the front page of all Puerto Rico papers for the last few days but because the people of Puerto Rico actually understand what's going on. When they hear two of the targets, GDB and

Santander, saying that it's okay to have an investigation, but the Oversight Board should do it, not the Creditors' Committee, these people may not be lawyers or judges, but they get it, they understand exactly what's going on.

So, let's start with the law, Your Honor. And this is, obviously, discovery, but it's much more than that, Your Honor. And, Your Honor, in a sense is going to have to put aside all these years of learning the Federal Rules of discovery because, as you know, 2004 examinations have been described as a fishing expedition, so it's much broader than in the Federal Rules.

But here, basically you're in the position as if you were a Bankruptcy Court, and the way a Bankruptcy Court would approach this is to say, Okay, is there a good cause for the investigation, number one? On that, I don't think it's even close because people are not arguing that there shouldn't be an investigation; they're fighting over who should do it. And they are arguing that you should favor the Oversight Board's recently announced decision to start an investigation over the very concrete investigation that the Committee is seeking.

I would say, though, on the issue of cause,

before I move on, is that, you know, we attached a chart to our reply, which shows all the inter-relationships during the crucial years between Santander, GDB and Banco Popular and also members of the Oversight Board. They were not on the Oversight Board then, but clearly at that time they were wearing a different hat. And I want to be clear. This is just the tip of the iceberg. We could not fit all the other names on the chart. It's already very busy. But we could not list all of the other names, but there are many other names of people that were involved in what we refer to as the revolving doors.

But going back to the issue of, Can the Board's own announced investigation, not commenced but announced investigation, be a basis to deny 2004 relief to the Committee? I would say, and Your Honor knows this, that Mr. Bienenstock is a scholar. In his objection, he said Your Honor should direct the Committee to stand down in favor of the examination that the Oversight Board will do, as is the case with all other cases where this issue has come up, where an examiner is appointed. He cited no case for that proposition, and we are aware of none.

And, in fact, this issue has come up time and time again, and I want to be very clear before I go

into these cases that the issue here is not that an examiner has been appointed. There's no examiner that's been appointed. The examiner is somebody -- or it's not technically, but the person they seek to hire will not be identified for a good while now because their requests for proposals are not due until tomorrow. And, therefore, they're asking you to deny the 2004 motion in favor of an investigation that has not even been commenced, so that already is unprecedented.

But -- and this is an investigation where the Board would be telling you, Look, we've been appointed a year ago, we have the right to commence an investigation from the minute we were appointed, and we decided not to do it, but now we're really serious, we will do it, we want to do it, so please tell the Committee to stand down. And that type of argument has been made many, many times before. Cases -- and it's amusing because these are cases often that Mr. Bienenstock and myself were in a similar position.

The first one is *Enron*, a very well-known case involving Judge Gonzalez who's on the Oversight Board, and there was a -- the argument was made forcibly by the US Trustee, Please, Judge Gonzalez, shut down the Committee process, the 2004 process, because there's an

examiner that's going to be looking into all of these issues, and the Judge basically said, in so many words, that's the nature of the beast. The examiner has a different goal than the Committee. The examiner is there to write a report, same thing has here, their role is to write a report. The Committee has a different function, which is to do some basic blocking and tackling in the case. And in that context, the Court basically rejected the argument that the Committee should stand down, and the Committee continued, because I remember that vividly, with its full-blown investigation while the examiner was doing its own investigation.

Same thing in *Lehman*. I represented the Committee for the first six, eight months of the case. There was an examiner appointed. He wrote a report, just to give you an example, on the Barclays transaction. Well, the Barclays transaction was investigated by the Committee, and the reason I know this is because I was a witness myself at a deposition on the Barclays transaction, and the Counsel for the examiner was there, so clearly there were dual investigations. So, that's *Lehman*.

But there are many others that are cited in our papers, and I think it's very important, Your Honor, to

go through some of the reasoning that Courts have used. And just to give you a sense, Your Honor, there's a more recent case, which is the *Caesars* case, where Mr. Bienenstock represented one of the committees, and an examiner was appointed, and he filed a motion for a 2004 examination, and it was objected to by the Debtor, saying, Don't -- this is wasteful. Don't let him continue his investigation because we have an examiner.

And I think it's important just to cite from Mr. Bienenstock's response, which is -- you know, this is a public case, you know, Case 15-01145, Document 655, Paragraph 21, where he stated, "One of the central functions of the UCC is to investigate the acts, conducts, assets and liabilities," et cetera. "Neither the Bankruptcy Code nor the bankruptcy rules qualify this authority in any respect. As a result, the possibility that a different party, e.g., an examiner may be investigating the Debtor's conducts or assets does not prohibit the UCC from conducting its own investigation." And as a matter of fact, the Judge entered an order granting the 2004 examination.

And it's very important. That order is Document 675 in that same docket, Case 15-01145. In that order, the Judge stated -- this is Paragraph 8 -- "The examiner, the debtors, the creditors' committee

and the municipalities committee must use their best efforts to coordinate their investigation and avoid interference or needless duplication."

So, he doesn't say in that order that the examiner will control and the others have to stand down; it puts a burden on all the parties to work together to minimize duplication, which is fine, by the way. I think Your Honor could do the same here. That doesn't stop the basic principle, which is that we can be authorized to conduct our 2004 examination.

Another case that's key where, Your Honor, I represented the Committee was *Refco.* Same issue there, the Committee wanted to do an investigation, Judge Drain was faced with arguments by the US Trustee that it would be wasteful, et cetera, et cetera, and the Court entered an order. This is at, you know, Case No. 05-6006-RDD, Document 1487. There the Court said -- this is Paragraph 6 -- that the examiner and the creditors' committee shall cooperate and coordinate their efforts to assure, very important here, to the extent possible, that their investigations are not unduly duplicative, meaning it's recognized that there's going to be some duplication, but he said that it shouldn't be unduly duplicative, and of course how can we not agree with that general principle?

THE COURT: So -- I'm sorry. I don't mean to interrupt. But I recognize that it has happened in a lot of cases, and none of those settings are exactly the same as this case, and I have reviewed the cases, and I will let everybody argue their positions.

But I do have a big concern here on how to -- assuming I would allow an examination, in this case, we also run into a lot of discovery in adversary proceedings, and the topic, as you've defined it, is so broad that I don't even -- I don't know how to get my head around it.

MR. DESPINS: Well, I think the best way is to look at -- there are various categories of document production requests. I want to be clear, this is only document production at this stage. We would not proceed with more than that without coming back to Your Honor for approval.

And basically there are a bunch of topics. One of them is the Constitutional debt limits. Puerto Rico has a Constitution that says, among other things, that you cannot exceed a certain amount of debt, it's based on a percentage, a complicated formula, but basically you're not -- you know, you're not supposed to exceed that amount of debt. Otherwise, you could just issue debt for a hundred percent of your income, and that

would not be a good thing.

So, there's a 15 percent, 1-5, cap, and the way it works is quite complex, but that's one of the issues, which is very present in this case, which is, Are some of the bonds, the billions of dollars of bonds that were issued, were they issued in violation of that cap? So, we're asking the targets, GDB, Santander, Banco Popular, for their documents regarding that issue.

And, you know, there'll be e-mails that say, Hey, we can't issue this, this exceeds the cap. Well, let me tell you what we're going to do, we're going to create a new structure, which is not going to be in the Commonwealth, we'll call it COFINA, and that will allow us to bypass -- I'm making this up, Your Honor. I'm not saying there is such an e-mail. I'm giving that as an example.

THE COURT: Thank you.

MR. DESPINS: So, obviously, that is very targeted, very relevant. And the 15 percent cap is an example. There are many other provisions that are at stake here. So, you know, clearly there are two things there. It could affect the validity of that debt. Of course that's very important. If there are billions of dollars of debt that are not valid, that's -- people

need to know that. That's one thing.

And, second, if in fact people were involved in doing this and were getting paid billions -- this is not an exagger -- billions of dollars in fees to structure these transactions, their potential claims, I emphasize the word "potential" because we don't know, we don't know the facts -- or we don't know all the facts, but there are potential claims against these people, and obviously, that's also critical, and that's the subject of this investigation.

So, that's just one of the examples that Your Honor -- and I think that those are -- how shall I say this? If there are a lot of documents responsive to that, then I think that the targets have problems, if you know what I mean. So, I think that it may sound broad -- and, by the way, I want to be clear, we're not here to argue scope and --

THE COURT: Well, I have to say I know that you're not, but I think that, under the good-cause standard, I think there have to be some parameters, and there have been very serious challenges to, Where do some of the statements made in your briefs go? You know, are they more -- will they actually lead, or potentially lead, to anything that benefits the estate, or are they more political statements? And I want to

make sure that we're dealing here in a fashion that will move the whole process forward and not get bogged down in a discovery dispute.

So -- and I think part of that has to do with -- you started off by saying, Is there good cause? You know, you need to establish good cause, and it has to be good cause for what; right?

MR. DESPINS: Yes.

THE COURT: So, I think that maybe in this case we need a little more specificity up front than in some other more finite investigations, maybe phases, maybe progressive discovery. I don't know. And those are the kinds of things I would like to explore in addition to recognizing that there's an argument that there shouldn't be any examination at all. So, I guess what I'm telegraphing here is that I want discussion on both, you know.

MR. DESPINS: Okay. So -- and I will do that, Your Honor, I'll endeavor to do that.

So, putting aside for a second the issue of whether we should stand down for the Oversight Board, I'll come back to that, obviously, but I think the issue of cause is easy because the Board issued a press release saying, We need to investigate this, and their press release is as broad or broader than what we're

seeking. So, it's very hard to say on the one hand that they recognize that this needs to be investigated, it's fundamental. And by the way, the targets say the opposite, they just say, Don't let him investigate us, have the Board investigate us. So, I think --

THE COURT: Well, you've stated, you've argued that your investigation is broader than any investigation that the Board would do.

MR. DESPINS: No, that's not correct. What we argued is that statutorily we are granted broader powers to investigate than what they have.

So, let me take you through you that. They have a section, they're relying on 104.0, and 104.0 of PROMESA says that they may -- it doesn't say shall -- may investigate the disclosure and selling practices in connection with the purchase of bonds issued by the covered territory for or on behalf of any retail investors; okay? So, we're talking about disclosure and selling practice to retail investors. That is very narrow in terms of a grant. That's the argument we've made. And if you compare that to what we're entitled to look at, which is the act, conduct, assets and any matters relevant to the formulation of a plan, that is as broad as you can get. That was our argument.

I think they want to occupy the entire

territory, meaning of what we want to do, but what I'm pointing out, and if we didn't do that well, I apologize, but what we tried to point out in our reply is that statutorily their grant is narrow, retail selling practices and disclosures, compared to our mandate, which is almost unlimited because it talks about the conduct, assets and any matters relevant to the formulation of a plan.

So, for example, the two examples that I give you, Is the issue of whether some debt is valid or not relevant to the formulation of a plan? Absolutely. Is the issue of whether debt is valid or not covered by retail selling practices? I'm not so sure it is. So, that's very important, to go and to compare the two statutes. What we said is that we have a much broader mandate.

But, Your Honor, I think that the only way -- I did say that I didn't think today would be the day to go into too broad -- you know, how many people are we going to search, but I hear you, and I think that, if we go through our document requests, other than the fact that, from the time point of view, they sound huge, and it's because the first time COFINA was created was in 2006, so I apologize for that. That's the way the facts are, and yes, so from 2006 through

2014 is a long time, we understand that; and, therefore, you may look at that and say, My god, this is too broad, but that's -- you know, we're stuck with those facts. If they had finished in 2014, they would be much narrower. If Your Honor has concerns about that, I hear that.

But there's one thing you said that actually troubled me a little bit. You mentioned political, and if one thing I'm not, it's political, and people know that and to my great disadvantage, and the Committee is not a political animal at all in the sense that they are looking at this, and it's not driven by any political agenda; it's just the fact that these issues do exist.

And by the way, in Detroit, the same issue about the validity of some Detroit debt was raised, was raised by the Debtor itself. Detroit itself challenged the validity of debt it had issued. So, I just want to make sure you know, so we're not completely crazy, this was done in Detroit as well.

THE COURT: And I don't want to be misinterpreted. I want to just make sure that what we're doing here stays in the confines of what's appropriate under the PROMESA statute.

MR. DESPINS: Absolutely.

THE COURT: That's where I want to be. And I recognize -- you started off by saying this is on the front page of the paper. I recognize that, but we're here to deal with it within the confines of the law --

MR. DESPINS: Yes, Your Honor.

THE COURT: -- and statute.

MR. DESPINS: But what I said is that it's very important not because it's on the front page of the newspapers.

THE COURT: I recognize that it is important.

MR. DESPINS: But it is on the front page. We can't ignore that dimension.

So, my point on the issue of, Should we be told to stand down, there are tons of cases, I won't bore you with them, but there are tons of cases that say, No, you don't have to stand down. And I have not heard one to the contrary.

But let's assume for a second that Mr. Bienenstock comes up with a case, a recent Supreme Court decision from last week that says that. These are cases involving an examiner who is appointed by the US Trustee and the Court, and it was answerable to no one other than the Court. This is not what we have here. What -- meaning -- I joke, I said it's kind of a god-like creature because that person writes a report

and is not answerable to anyone. In this case, that's not what they're proposing. They're proposing to hire someone, a regular person, who will do an investigation and report to this Board. And, therefore, this argument that we need to stand down is certainly not as compelling as those cases.

And even if they said what he -- but they don't. These precedents show that the Courts did look into this, and I mention Judge Drain, but I think it's really, Your Honor, two sentences. Basically the Judge said, "And, consequently, I can't ignore the fact that we should not hamstring the Committee's separate and independent obligation to investigate." And this is in response to US Trustee's attempts to shut down the Committee in the *Refco* case.

So, now, let's -- so we've been through the cases, and I think that we've been through 104 as well. But let's now go through through the issue of, Okay, the Board wants to do this -- by the way, I want to be clear, we're not trying to stop this. I hope this came through clearly. They can do whatever they want. We have no power to stop them. They have the power to do whatever investigation they want to do.

And I would say -- it's very important to say this: The Board members deserve kudos for the free

work they're doing. They're volunteers, and we don't take lightly criticism that we make of them in certain cases because these people deserve a lot of credit for spending all of their time on a volunteer basis to try to fix this situation. I want to make sure that's clear and that there's no allegation of lack of integrity, for example, on the part of Judge Gonzalez. That's not the issue at all.

But we have to step back and look at the facts, which is that they, in this instance, did not distinguish themselves. And what I mean by that is -- let's look at the first thing. They have the power to investigate this from day one. Of course I'm not saying they should have started on day one, but a year? That's a long period of time.

And even if you're tempted to -- you might say, Well, they've been very busy, and that's a very good point. But they're not going to get less busy; they're going to get busier going forward, so that argument about being busy doesn't cut it. And if that were the only point, I would sit down, Your Honor, but it's not the only point.

They approved, in May, 2017, what I call the form of subpoenas, procedures to investigate, so -- and you might think, Wow, that shows you they want to go

forward. But that was in May. And, Your Honor, one has to think about what happened at that meeting, meaning they approved the form, presumably it's because they wanted to do an investigation, but what happened since then, until we filed our motion? Nothing. And also presumably at that point, somebody said or should have said, Hey, pointing to counsel, local counsel or counsel for the Board, can you guys help us with this investigation? And presumably the answer, if that question was asked, was, No, we can't, one counsel wrote the opinions on these deals and represents Santander, another counsel represents Santander on other matters.

So, do I know that these discussions take place? I don't know, Your Honor. My point is, if they didn't, that's really troubling because that was in May, and if somebody said, No, we can't do it, then they should have said, Let's hire somebody else right now. But we know now that, after we filed our motion, that's the first thing that they did, to go and retain somebody else. So, that's the first point.

And the second point is that, in June, Your Honor, you know, before we existed, meaning the Committee did not exist, the motion did not exist, Mr. Carrion came out of an Oversight Board meeting and

is quoted -- he doesn't dispute that -- as saying, "It's a waste of time to do this investigation." He is the Chairman of that Board. And you might say, Well, it's just a declaration. Who cares? But the point is that, again, two things happen: Either other people disagreed with him on the Board and said, No, we really care about this, in this case, I don't know why that wasn't expressed at all; or they did agree with him and waited until we filed our motion to say, You know what, we need to do something here because the Committee will control the territory, and we don't want that to happen. And that's exactly what happened here.

And the last thing they did, Your Honor, is they said, after we filed the motion, they said, Okay, now we're going to do it, and they formed this Committee, and the Committee is comprised of Mr. Carrion. And, again, two days after I meet with them and tell them, How could you put Mr. Carrion on this Committee, given that his father was on the Board of Banco Popular, that his family founded the Bank, et cetera? Mr. Carrion resigns. Okay.

So, you might think, Well, now they're okay. But, Judge, the point is the Committee looks at this and says, It's not because they have un-pure hearts, that's not the point; the point is that they are really

busy with other things, and they're really not motivated to do the investigation. They're doing it because we pushed them into it, which is not our role. We're not interested in playing that role.

And that's why the Committee should not be told to stand down, because we have no idea what could happen, meaning they'll -- and here I want to draw on your experience, Judge. Let's assume today nobody's been retained -- right? -- there are no professionals retained for this investigation. That's number one. So, they need to retain those people. That's going to take some time. I'm not going to try to guess, but it's going to take some time.

They're going to have to do conflict checks, waivers and all that. Good luck, by the way, finding a law firm in Puerto Rico that doesn't have a conflict with Banco Popular and Santander, but putting that aside, let's assume they do that. Once they have that team, it's going to take that team some time to get up to speed, and then they're going to have to serve subpoenas. And Banco Popular and Santander are not going to say, Oh, sure, come and get whatever documents you want; they're going to be back right here, and there's going to be some back-and-forth.

The point I want to draw, Your Honor, that's why

I want to draw on your experience on this, does anyone believe they will get any documents out of Banco Popular and Santander before January 1st, 2018? I don't buy that for a second because they're so far behind. And so you might say, So, who cares? Well, the Committee cares because we don't care about the report, meaning if they want to issue that report in 2020 that nobody will write, that's their prerogative.

But there are things happening in the case. You heard this morning about this mediation. We can't talk too much about it, but as you know, that it's going full bore, and the purpose of that mediation is not to resolve the case in 2020; it's to resolve it tomorrow -- I'm exaggerating -- you know, soon.

THE COURT: Tomorrow would be good.

MR. DESPINS: Well, tomorrow would be good.

THE COURT: What timeframe are you thinking of?

MR. DESPINS: Well, we already have the document requests, meaning if Your Honor authorized us to do the 2004, we could have the meet-and-confer with Banco Popular and Santander in the next two weeks, and I hope we would agree on something, but if we don't, we can go back -- we can be here by the first week of September, and at that point they've had the document production requests for a good two months, so it's not like they

can say they need two months to produce that.

THE COURT: Well, we can assume that they're going to tell me that they haven't done their document search yet. So, if you were going to start today, how long would you contemplate?

MR. DESPINS: I think we can easily have documents from them by the beginning of October, not all the documents but some documents. And that's crucial, Your Honor, because -- I'll give you an example. This is Docket No. -- in this case, it's Docket No. 1056. It's a 2019 statement, which reflects that Santander has 2.5 billion in Commonwealth bonds, $2.5 billion. This is not a random number. $2.5 billion. So, these bonds may be all good. I don't know. My point is that, clearly, this investigation is relevant to that at the very least, so I don't know how we're going to, you know, not get documents until January and actually try to resolve the case without addressing these issues head on. And how do we really deal with the case without knowing what debt is valid?

THE COURT: And that's my other question. When you raised the issue of the Constitutional debt limits, is that being raised in any of the other adversary proceedings?

MR. DESPINS: That's a tough question because there are 25 adversary proceedings.

THE COURT: Yes. That's why I'm asking you.

MR. DESPINS: I'm at a pause for --

THE COURT: Because I think, in this case, it's not only coordination with any other investigation that might be going on outside of the parameters of the Title IIIs, but it's also coordination with what's going on in connection with the numerous cases that are --

MR. DESPINS: That's a very good question, but I -- it's always dangerous to answer a question like this on the fly, but there are a bunch of Constitutional issues that are being raised, for example, by the GIO bonds in a lawsuit, that they want to be deemed -- that was just transferred, Your Honor, yesterday or the day before -- they want to be deemed to be secured or have priority based on the Constitution.

But that doesn't raise the issue of whether some of their bonds are not valid because of the 15 percent cap. To my knowledge, I don't think that the issue of Constitutional -- of violating the Constitution -- or validity of a certain debt instrument I don't believe has been hit head on to date, but people will correct

me if I'm wrong on that.

So, from a timing point of view, there is just no way that this -- that we cannot deal with this immediately, Your Honor. Let me just -- sorry. Flipping through my notes here for a second.

THE COURT: In addition to the Constitutional limits, if you were going to characterize your requests, what other topics would you -- how would you divide it into different topics?

MR. DESPINS: Well, there is the issue of the validity of the COFINA structure. That's number two. And that has many implications, Constitutional and non-Constitutional, meaning, Why was COFINA created? We know that, at that time, the Commonwealth was hitting a wall, basically could not borrow any more in 2005 and 2006, and somebody came up with the idea of creating COFINA. How was that created? Why was it created?

THE COURT: And that's in the context -- that's also going to be the Unsecured Creditors' Committee's investigation in the Commonwealth-COFINA dispute; right?

MR. DESPINS: Yes, and I'll -- yes, but it's two -- it's hitting one bird with -- yeah -- two birds with one stone -- sorry -- because there is that

investigation, which is, if in fact we can challenge the COFINA structure, we will. And so that's one issue.

But the second issue is, if people were involved in creating a structure that was designed to avoid some law or Constitution in Puerto Rico, there should be -- or there could be claims asserted against these entities that then turned around -- I'm not saying this happened, but it could have happened -- turned around and just sell those bonds to other parties.

So, the same e-mail can have two purposes: One, to be used in the adversary -- in the litigation between Commonwealth and COFINA; and, two, to be used to determine the validity of some of the claims of these entities or whether there are claims against those entities with respect to fees that were paid by GDB or the like.

So, it's two separate issues. And that's one of the points we're making, which is the Oversight Board took itself out, you know that, of the COFINA-Commonwealth dispute, so they're out of that. So, they -- because they're the agent for the Commonwealth and Bettina-White is the agent for the COFINA side, and the work we're going to do to review that structure will be -- as I said, will have double

duty, meaning to look at whether there was some bad conduct by people knowing that these transactions should not have been done but also to determine whether transactions are valid or not, so that -- and the Oversight Board would only have single duty on that type of discovery, and that's why we think we should be allowed to go forward.

Then, I would say, Your Honor, even if the Court were inclined to deny the 2004, which I think would be very troubling to us, but if you're inclined to deny it, we would still be entitled to get from Santander, Banco Popular and GDB all the documents relevant to the COFINA transaction because that litigation is -- not the litigation, but that issue is teed up, it's a live issue, and there's no argument that the Oversight Board will say, No, we'll write a report on that. The Oversight Board is not going to write a report on the validity of the COFINA structure. They can't. They took themselves out of that by --

THE COURT: But then I run into the principle that, if the same discovery is being sought in an adversary proceeding, it seems to be a pretty bright line about having the discovery at least be governed by the Rules of Civil Procedure for that category.

MR. DESPINS: Your Honor is correct to the

extent that the target of the discovery is the Defendant in that other proceeding. So, I'll give you an example. If we were suing Santander tomorrow, let's assume, you know, for some reason the Oversight Board says, Okay, we'll give you the right to do that, we're suing them tomorrow, we cannot seek 2004 discovery of Santander in that context. That's hornbook law. That's what you just stated.

However, that's not what's happening here. In the context of the Commonwealth-COFINA dispute, Santander and Banco Popular and GDB are not Defendants. The Defendant is an entity called the COFINA because the litigation will be over the issue of who owns that money that's either COFINA or that could be deposited in COFINA in the future.

So that -- the cases -- and we cite a decision by Judge Walrath in -- I forgot the name of the case. It involved insider trading. It'll come back it me. But we cite this case for that very proposition, which is the Defendant has all the rights to say, Wait a minute, I'm a Defendant in a litigation, you cannot issue 2004s to me. But Banco Popular and Santander and GDB will never be Defendants in the COFINA-Commonwealth litigation. That litigation will have two parties, the Commonwealth and COFINA. The others are just

third-party targets, and they --

THE COURT: But you would seek discovery from them in the Commonwealth-COFINA --

MR. DESPINS: Correct. And, by the way, just so you -- the party that could complain about this would be the lawyer sitting right here who's the lawyer for the COFINA agent, but they're happy to have us get the documents because we've put in the proposed order that they will get whatever we get from Santander, Banco Popular and GDB on the COFINA dispute. They're going to get that directly, so there's not going to be any games here at all. Therefore, the only party that could have an argument about this is not arguing this because we put that in the order, that whatever we get on the COFINA-Commonwealth dispute, we have to give to them immediately.

THE COURT: And is there any significance to the fact that the Board's investigation would have to be made public and yours does not?

MR. DESPINS: No. Actually, I'm glad you raised that because it shows why other Courts have allowed both to go forward at the same time, because, I mean, objectively you might look at that and say, Wait a minute. Two investigations going on at the same time, that sounds a bit too much. But the reason why Courts

do that is because there are different goals here.

Their goal, they're mandated by Congress to make their report public. We have no such duty. Our job is to maximize recovery for unsecured creditors, and therefore -- let me give you some concrete examples. In *Enron*, for example, we conducted 2004 discovery of a bunch of targets and got billions of dollars in claims reduction or affirmative recovery against them. At the same time, the examiner was writing his report, but two different, completely different roles, and that's why, you know, I think Judge Gonzalez said it's the nature of the beast in a sense that that's why Courts allow the two to go forward.

And even for -- assuming for a second that we find nothing, I'm not saying that's the case, but let's assume that we do the investigation and there is no problem, everybody is squeaky clean, and all these billions were properly paid and all that. The investigation still needs to be done because we need to know whether there's a challenge to their claims because, as you can see, there are billions of dollars of claims asserted by some of these entities; and also in terms of -- that's the other point I make is that 2004 is not only to assert claims, this is very important; it's also to the extent it involves or

affects the administration of the case, and what do I mean by that? We said that in our reply.

The Commonwealth does not have cash; it has some cash, but it doesn't have $75 billion of cash; right? Otherwise, we wouldn't be here. What it has is future income, and it can give that to creditors in the form of bonds. The future bondholders, the creditors we represent who are going to take bonds or indebtedness from the Commonwealth deserve to know, they need to know whether there were any, for lack of a better term, shenanigans going on or whether the same people are still involved in that context.

THE COURT: Then, how do they get that investigation information if your investigation isn't public?

MR. DESPINS: It's not that we're precluded from making it public because I'll give you an example. If we found -- I want to be clear here, there's no basis to say this, but if we found that people who were involved in the construction of the structures that were illegal or that they knew were illegal are still involved, I guarantee you that we would file something with the Court to say that. It's not because we don't have an obligation to be public that we would not make it public, but I know that creditors want to know who

they're dealing with, what the issues were, and the problem is that the Board may not get to write its report for several months.

And by the way, I want to be clear, I can't blame them. They're charged with saving the Island -- I'm exaggerating slightly -- but to revitalize the economy, to come up with a plan of adjustment. They have a lot of things on their plate, and that's where I started, and that's where I'll end, Your Honor, subject to a short reply in the end, which is that they are not motivated or they don't have the tools now to do this, and -- to do this investigation, so if they want to do it and they do it on their own schedule, that's fine; but there are too many things going on now for them to handle this and an investigation that's, frankly, overdue at this point.

Thank you.

THE COURT: Thank you.

MR. FRIEDMAN: Your Honor, good afternoon. Peter Friedman on behalf of FOF and the Government Development Bank of Puerto Rico.

I cannot emphasize enough that neither the Committee nor Mr. Despins speak for the people of Puerto Rico, which is how Mr. Despins started. The people of Puerto Rico are spoken for by their

Government and the Oversight Board, which was appointed pursuant to PROMESA. The Committee is not an ombudsman or a roving party to spray pledge into every portion of the Government's conduct. That's not its job, it's not its responsibility.

Now, one thing you did not hear anything about was cost, the cost in the cases Mr. Despins mentioned, *Enron*, *Washington Mutual*, *Refco*, *Lehman Brothers*, et cetera, *Caesars*, it's hundreds of millions of dollars to conduct investigations, and that money goings into lawyers' pockets, including a FOF's lawyers pockets. Where won't it go? It won't into two places. It won't go into creditors' hands, and it won't go into the people of Puerto Rico's expenditures going forward. And that's just not acceptable, for that money to be spent on a duplicative investigation because of course that's what it'll be. Now, also --

THE COURT: Isn't that -- I mean, the Board's investigation hasn't started yet, though; right? So, isn't the -- I'm concerned about the costs. Let me make that very clear. I am concerned about the costs, and I am concerned about making sure that people have the time to devote themselves to the issues that need to be resolved here.

On the other hand, I'm very aware of the need or

the ability of the Committee to conduct investigations to see if there are appropriate other avenues to pursue. It's a balancing act.

But when you tell me cost, I don't have anything going forward right now, so it seems to me it's a lot in your control as to sort of where that cost gets incurred.

MR. FRIEDMAN: From FOF's perspective and the Government's perspective, it's not at all in our control; right? We have the Oversight Board conducting a statutorily designed investigation under 104 of PROMESA. I'm not sure it even needs 104 of PROMESA. I think, as a debtor's representative, it also has the right to pursue any claims that belong to the debtors well before the Committee ever gets the opportunity to pursue those claims. So, from FOF's perspective, one investigation we recognize the need for, and that's -- that ought to be in the hands of those to whom Congress specifically gave that responsibility.

And I note, Your Honor, that this is not a typical Chapter 11 case, and the purposes of this case are different; right? This case, unlike a Chapter 11 where you have, you know, necessarily marshaling of assets, that's not what this is about; and the cases we've cited in our papers make really clear what a

Title IX -- or Chapter 9 or a Title III case is supposed to be about, which is about maintaining the balance of public services between creditors and a body politician and a governmental entity. Those appear in our papers. And that's what this is about.

So, you know, it's not about the kind of investigation that you might typically have, and in fact none of the cases cited involve a public entity. I will note that, for example, though, Chief Judge Morris of the Southern District of New York Bankruptcy Court did, in *Dinegy*, let only one investigation go forward when an examiner had been appointed and refused let the creditors' committee tag along or conduct its own investigation because she was so concerned about cost issues.

And so, in fact I think that, for at least purposes of this, both in terms of PROMESA 104 and the Oversight Board's general powers, I think it's probably most appropriately analogized to a trustee. And when you look at the *Buick* case, which we cite in our papers, what did the Court say? It said, "Rule 2004 investigations shouldn't be used to interfere with the powers of a trustee." And that's precisely what would be done here.

Now, we don't have -- and, by the way, the

fishing-expedition cases that were cited, *Young*, *Suk* and others, something was missing, and what's missing is the extensive discussion in those cases, which the Court hit on, which is that good cause is a balancing test, and you measure the intrusiveness and the expense against the benefit. And Mr. Despins, you know, I think tried to characterize as best he could the document requests that the Committee has served as narrow, but it's just not true.

Request 14 to GDB requests all communications between GDB and Banco Popular and Santander since 2006, all documents concerning the claw-backs, documents about the credit worthiness of the Commonwealth, documents about -- you know, concerning COFINA and the COFINA structure. That's not narrow, that's not circumscribed; that's massive. That's designed to impose massive burdens and run up massive fees. And so it's just not right to say that there's any effort at a narrow -- at this being narrow. And, by the way, when you look at requests like all documents concerning COFINA, I do think you run head on into the parallel proceeding doctrine that the Court discussed.

Now, if the point is that the COFINA agent has already agreed that it will not seek different

documents or isn't going to try to whipsaw us with specific requests in that matter, then, you know, we can discuss, as the FOF and GDB, we can discuss those requests in the context of a proceeding that has not yet been started but we know will be soon starting. We're happy to sit down with Counsel for the agents -- for the Commonwealth and the agents.

THE COURT: Do you want to speak right now?

MR. SEIDEL: I will await him. Martin Seidel from Willkie Farr & Gallagher. We appeared, filed our notices just yesterday, but we're Counsel to the COFINA agent. And I've now been spoken for twice by people I'm not sure I'm prepared to have speak for me.

THE COURT: So, have a seat.

MR. FRIEDMAN: That's my point. I can't speak for Mr. Seidel. What I can say is, though, that a single set of requests -- we can't be whipsawed, and that's what a unilateral commencement of Rule 2004 process on COFINA-related issues outside of the context of actual litigation would do to us, which -- in any event, litigation which we know to be coming.

Your Honor, I think that, in some ways, the most -- or the best analogy to this is probably the *MF Global* where the -- and it's not perfect; right? In some ways it's apples and oranges, but apples and

oranges both drop to the ground and both grow on trees and both have juice if you squeeze them, so there are some similarities.

And that's why there's a single trustee who's given specific powers to do things and to look into things and to report and to bring appropriate causes of action, and there's no doubt that, if the Board chose to, it could exercise that power here. And the Court said, Look, Judge Glen said, Look, there's a structure, there's a statute in place that gives certain people powers, and that's the horse we're going to ride for discovery, and we're not going to allow 2004 discovery. It's not a perfect analogy because that wasn't a -- I don't believe that was a creditors' committee seeking discovery, and I recognize there's things somewhat different about a creditors' committee, but I think the larger point is the important one, that the powers that the Oversight Board has are important.

And, again, it is not correct to say, as was alleged in the papers, that FOF or GDB support the Oversight Board to do an investigation because we think the Oversight Board will be lenient. We don't. We expect them to be unsparing in whatever conclusions they reach. We just do not want to have to pay for it twice. I think that's the issue.

And, you know, is there some method or mechanism proposed by the Oversight Board in its motion that would permit the Committee to have some ability to look at documents and submit questions or read transcripts that might keep costs down while still letting the Committee have some sense of what's going on? You know, I don't think we can object to that. You know, I think the Oversight Board made a proposal, and you know, while I would prefer -- I know my clients would strongly prefer to have no double-billing, we understand that, that may be somewhat of an appropriate compromise.

But two unfettered investigations is just -- you know, has real repercussions when you look at the dollar figures that have come up and -- as you know, Your Honor already heard this morning, our clients are constantly subject to mediation, as I think you know because you got a list of them the other day, there's, I mean, literally 19 adversary proceedings plus one filed this morning. I assume that may be referred to you soon. People have also jobs to do and, you know, so balancing --

THE COURT: But I solved all your problems this morning.

MR. FRIEDMAN: Thank you, Your Honor.

Hopefully, some of them will be solved again this afternoon. And so -- but, you know, it's a real issue as to how we do that. And I do think many of the issues in discrete ways that are listed in this document request may come up in different adversary proceedings or in plan-confirmation proceedings, and if they do, so be it. But the fishing-expedition nature of this is not justified under the good-cause standard.

THE COURT: Can you tell me the scheduling of the Oversight Board investigation?

MR. FRIEDMAN: I can't, Your Honor. I think Mr. Bienenstock can speak to that. And obviously, you know, we'll work on that, and, you know, we'll address with them how to move forward in an appropriate manner on -- you know, on a schedule that I think balances everybody's needs and particularly the most important need, which is wrapping this case up in a plan that maybe not everybody loves but provides appropriate recoveries without, you know, the need for people writing magnum opuses while the case is pending.

So, that's all I have. I don't know if you have any questions for me, Your Honor, but I'd happy to concede the lectern to Mr. Bienenstock, if he'd like to speak.

THE COURT: Thank you.

MR. BIENENSTOCK: Good afternoon, Judge Dein. Martin Bienenstock of Proskauer Rose for the Oversight Board, as representative of the Commonwealth and the other Title III Debtors.

Your Honor, I'm going to try to restrict my remarks to a comment Your Honor made early on, that Your Honor knows there are some special facts that are attributable to this matter, as opposed to the matters that the Committee referred to in other cases. And I think the facts here and the statute here speak volumes and also make the Court's decision much simpler than it might appear.

So, I'd like to start by mentioning some of the facts and laws that go to the big picture. In Chapter 11, as Your Honor no doubt knows, there are some trustees in some cases, and where there are not trustees, there are examiners in other cases. When there's a trustee, the trustee is allowed to both operate the business and conduct conduct investigation. When a trustee is not appointed and an examiner is appointed instead, the examiner conducts the investigation but does not run the business.

I say that to start because the Committee made the point that, in this case, there's no examiner. Well, that's not right. Under Section 301(c)(7) of

PROMESA, the Debtor is deemed to be the Trustee, and the Oversight Board is the representative of the Debtor, as the Trustee. It says, everywhere the statute says "Debtor," it should be read -- or everywhere the statute says "Trustee," it's the Oversight Board. We are the investigator and the examiner.

And the issue that the Committee put to Your Honor, whether it should be told to stand down, is not the issue; the issue is whether it should be allowed to stand up, and I don't say that because it's a catchy phrase, which I'm not very good at normally --

THE COURT: It's not a bad one, though.

MR. BIENENSTOCK: -- but there's a significant difference here. The difference is this: The reason the Committee is front of Your Honor this afternoon asking for relief and the Oversight Board and Commonwealth are not is that the Commonwealth and Oversight Board are already authorized by PROMESA, in a few provisions I'll mention in a moment, to conduct investigations. The Committee is not. The Committee needs this Court's permission to be the second horse on one track. And the way I would put the issue to Your Honor is whether Your Honor really wants to put two horses on the same track. It can get a little

crowded.

THE COURT: Well, what in PROMESA eliminates the 2004 examination by the Committee? I mean, that's the problem. You know, it's incorporated some provisions and not others. It doesn't eliminate this examination. I mean, it doesn't say, You don't have this authority. I have these bankruptcy rules that exist and are enforceable in the context of PROMESA.

MR. BIENENSTOCK: Right. So, let me just start by giving you the Oversight Board's authority, and then I'll get to the Committee's contingent authority.

THE COURT: Okay.

MR. BIENENSTOCK: The Oversight Board's authority is not what the Committee represented to Your Honor a few moments ago, which is that we have the narrow scope of investigation set forth in the PROMESA Section 104.0 relating to selling practices of the various banks of the Commonwealth's debt. That is one investigation that Congress singled out.

But to look at the Oversight Board's authority, Your Honor would have to start with Section 104(a) of PROMESA, which says, "The Oversight Board may hold hearings, sit and act at times and places, take testimony and receive evidence, as the Oversight Board considers appropriate." One cannot have a broader

charge to investigate anything that seems appropriate than that. And the 104.0 that the Committee points to is simply one sub-set of the items that the Oversight Board may investigate.

It is truly extraordinary, Your Honor, as compared to the Bankruptcy Code, for PROMESA to constitute the Oversight Board as an investigatory body. It literally says to the seven members, You may sit and hold hearings, you may issue subpoenas, you may take testimony, you may get documents, you may enforce your subpoenas. That's -- Congress could not have sent a stronger message that it meant for the Oversight Board to investigate.

Now, to answer Your Honor's question, What about the Committee, the bankruptcy -- or PROMESA, as Your Honor knows, incorporates the bankruptcy rules, which include 2004, and the key to Rule 2004 is very simple. It's not self-operative; Your Honor has to authorize it and to make the -- that's why I said the issue is whether they get to stand up today. And to determine whether Your Honor should do that today, one has to take into account the facts and circumstances of the case and what Congress intended to happen.

There can be no argument that Congress did not intend for the Board to conduct this investigation.

For gosh sakes, it empowered it to do it with powers that no other board in bankruptcy has ever had before, to our knowledge. So --

THE COURT: But it doesn't require it, does it?

MR. BIENENSTOCK: No, it's not required. The Board is given a lot of discretion, but the Board in this case has gone public and has basically said it has exercised its discretion to do it.

And just as in the COFINA-Commonwealth dispute, while the Board could have simply imposed a proposed settlement and brought it to the Court and said, Please find that it's in the zone of reasonableness, which is the bankruptcy standard for approval of settlements, the Board decided that, for the good of the process, transparency, et cetera, there would be a Commonwealth agent who we made the Committee and a COFINA agent who the COFINA creditors decided on and the Board approved.

The Board, nevertheless, reserved in that protocol the right, at any time, to do its own settlement and to propose plans of adjustment. But the Board believed that, for the good of the process, and I believe Judge Swain, at the first hearing, encouraged this, encouraged us to defer to other agents selected by creditors so that people would have confidence that the COFINA-Commonwealth dispute was not being biased in

any way because Congress made the Board the representative of COFINA but also made it the representative of the Commonwealth, so we were on both sides.

The investigations we're talking about here have none of that. These are investigations to determine causes of action that the estate may have against third parties -- the Board is not on both sides -- or that creditors may have against third parties that they can independently sue on.

Importantly, Your Honor, under bankruptcy law and Supreme Court decisions, the Committee is not allowed to sue in the name of creditors, and in this case, one of the unique facts that I think Your Honor was alluding to, consciously or unconsciously, earlier is Section 305, which says that no one can interfere, including the Court, with a Government's property without the consent of the Oversight Board.

So, while, in Chapter 11 cases, committees similar to the ones -- similar to the one here for the general creditors, they often get, under a plan, permission to have derivative standing to sue on the estate's cause of action against third parties, and they do that in the context of some type of litigation trust that goes on after the plan is confirmed.

That's not happening here for a very simple reason. To the extent causes of action of the Commonwealth are identified or of the other debtors, the Commonwealth's instrumentalities, the Commonwealth is not going to cede to a committee the right to interfere and prosecute those. The Commonwealth will take care of it by itself. And certainly the Committee cannot be so presumptuous as to assume that the Committee will get any type of derivative standing.

The Committee does point in its reply to PROMESA Section 926 where derivative standing can be given, but those are just to avoidance actions, those preferences, fraudulent transfers and the like, which are not the types of actions that people are talking about here, at least for the most part.

Now, in my now 40 years of practice, I've heard Judges consistently, without exception, say they don't like to be told about orders in other cases because you have to know what the facts were in the other cases to make sense of the order. That is probably illustrated ideally here, unfortunately. For instance, the Committee says, Look at the order in *Enron* where the Committee and an examiner and *Enron* itself could all conduct investigations simultaneously. The Committee didn't give Your Honor a really important fact about

Enron. The order appointing the examiner that allowed for these three investigations was a settlement of a creditors' request for the appointment of a Chapter 11 trustee.

Judge Gonzalez, who was the bankruptcy Judge in *Enron*, did not decide that he wanted three contemporaneous investigations; he was presented with a settlement agreement that, as Your Honor knows, Judges can't write the settlements, the parties have to either settle or not, and they decide on the terms. So, it was not a judicial decision to allow for contemporaneous investigations; it was the product of a settlement agreement, which was embodied in the order appointing the examiner.

And then they point to *Caesars Entertainment*. In *Caesars Entertainment*, the Committee, the General Creditors' Committee, was granted permission to conduct Rule 2004 examinations before an examiner was ever appointed. And the Committee points Your Honor to the order appointing the examiner, which, upon reading, it's a fair reading of that order, that there were going to be contemporaneous investigations.

But, there again, the Committee didn't give Your Honor the most important fact. After Judge Gerber entered that order, he basically looked at Committee

Counsel, which I was one, and he basically said, You'd better sit down with the examiner and agree as to how this is going to unfold, or I will consider things like injunctions. And what did we do? What we did was the examiner went forward with both document production and depositions and informal interviews and committed to provide the -- there were two committees -- the documents that it was allowed to provide. Some were marked with various confidentiality waivings and other things. We didn't get them all, but we got what the examiner was allowed to give us.

So, there were not contemporaneous investigations; there was the examiner's investigation, and the Committees got the benefit of the examiner's document discovery and depositions, deposition transcripts, and some were redacted.

As the Retirees' Committee knows, and frankly, as Mr. Despins knows also, we have told both Committees that, as we do this investigation, we do want to both consult with them and share discovery. We have not made hard-and-fast commitments because we believe that the investigator, which will likely be a law firm, that the Oversight Board retains should be at the table when we make the final arrangements.

But overall, we want them both to be consulted

during the process, and that includes -- they can feed questions to be asked to different witnesses, they can get the discovery -- the documents we're allowed to give them, and they can make suggestions as to additional documents or witnesses that should be deposed or interviewed.

THE COURT: What's your schedule on this, on the appointment of the investigator?

MR. BIENENSTOCK: We are hopeful that the Board will retain an investigator next week, and the investigator would get to work immediately, and there's -- it was very easy for the Creditors' Committee earlier to talk about production starting in October without the targets being present to object, but there's no reason why whatever the timetable the Committee would have would be any faster than the timetable we have. And in fact, the Oversight Board basically has more at its disposal under PROMESA to get documents and to compel testimony than they do. So, we would be no slower; we might be a little faster.

THE COURT: And what's your impression as to the scope of the examination that the Board would do, as opposed to the Creditors' Committee?

MR. BIENENSTOCK: Well, currently, what the Committee have asked for is largely incorporated by

104.0 of PROMESA, and the Board is definitely covering that. But the Board is going to be interested in basically two subjects: One is anything that might bring material assets to the creditors and the people; and the other is anything necessary to create sunshine about the causes of the losses, taking into account some important factors, Your Honor. Most of the $74 billion of debt that we're restructuring was issued more and, in most cases, a lot more than three and six years ago, so there are serious statute of limitations issues, except for the transactions in the last six years, and it might be less than that.

Also, it's not as if the people of Puerto Rico and most of the world don't know that the primary cause of this situation is prior governments that simply issued debt to fund deficits rather than make structural changes to eliminate the deficits. And while there might have been improper selling methods or not, that's yet to be investigated, in the context of 74 billion of bond debt and 50 billion of unfunded pension debt, whether the cause of action we're talking about can be materially -- will materially impact recoveries is something we're going to find out, but the numbers are so huge, if you compare it to the net worth of Santander and Banco Popular, if you grabbed

everything they had in sight, if they have liability, it's not as if it's going to pay creditors in full.

So, I think it has to be done -- the investigation has to be done objectively, understanding the upsides and the downsides and that the expense could easily out-do the upsides if it's not done carefully, which the Oversight Board intends to do.

The Committee made something of the fact that the Board was appointed on August 31, 2016, and it's now doing the investigation. I don't know that, that needs defense, Your Honor, but some facts ought to be on the record in that connection.

The Board has certified fiscal plans for the entire Commonwealth as well as several of its main instrumentalities. The Board did not have an Executive Director and even a General Counsel until well into 2017. The Board hired its first Deputy General Counsel only in the last two months. The Board now has a staff to help the Oversight Board members who, notwithstanding that they were uncompensated, were working frequently as close to 24/7 as one can work, and that included -- and this is something I have personal knowledge of -- over every Thanksgiving, Christmas and New Year's holiday one can think of.

This investigation, partly for the reasons I was

just mentioning, that one has to keep perspective in mind as to how much of a difference it might make, was not more important than getting fiscal plans done and on the road to the restructure, and the Committee acknowledged that. In May, the Board announced how it was going to go forward with the investigation. It's not as if it was at all in reaction to any Rule 2004 motion of the Committee.

As far as publishing the investigation, there are always two reasons for an investigation in bankruptcy, Your Honor: One is to see if you can find something that will help enlarge the pie for the benefit of the stakeholders; the other is simply to provide sunshine. Creditors are suffering losses. They should know why. And the Board both has a statutory obligation in connection with 104.0 to publish the findings of that investigation, but the Board also doesn't have a problem making public other findings because the sunshine policy is important, and the Board is in a perfect position to provide that sunshine. Also, you know, we keep a public website, and contracts and letters to the Governor, sometimes back and forth, are often put on that website. The Board has certainly been as transparent as possible; whereas, the Committee acknowledged that's not its job.

But to the extent that we want to maximize the benefit of the investigation, both the benefit of enlarging the pie and to satisfy what I'll call the sunshine policy, the Board is obviously in a much better position to do that.

So, bottom line, what we're asking for is for the Board to be able to progress on its investigation. We want to provide both Committees the consultation rights, the access to discovery that I described earlier, also to get recommendations from them, and if they think, for instance, we haven't asked for some documents that would be useful, they can tell us what they are and we can ask for them. We will also end the investigation, and if they think that there are things we left uninvestigated that should be investigated, they can come to this Court at any time before or after we finish to see whether those things should be separately investigated by them.

But we're not aware, at least I'm not aware, of anything, of any case where there was not a strong coordination emanating from the Court to prevent simultaneous requests for documents or testimony from the same witnesses at the same time. It just doesn't happen. And usually it's done by what I've described earlier, that if the examiner or the equivalent of the

examiner or trustee is going forward, the others do not. Whether they get authority and they're ordered to stand down or they don't get authority, that becomes a distinction without a difference. The fact is they can't do it while an examiner or a trustee is doing it because it makes no sense.

And Your Honor can imagine, and it has more experience than any of us here, the witnesses sought, Your Honor can imagine what they're going to say when they say, Oh, I got a subpoena from this committee and from that committee and from the Oversight Board. Which should I deal with first? Should I see if there's overlap? Should I -- how should I -- who gets my first time? How many hours do I have to spend in deposition? Your Honor could probably add to my list of horribles, but you don't even have to be a lawyer to know that this is not a situation that anyone would knowingly and intentionally create, and that's what the Committee is asking Your Honor to do.

And now that Your Honor knows what really happened in *Enron* and what really happened in *Caesars*, it's not like any Court intentionally ever let two investigators loose on the same witnesses at the same time. It just doesn't happen.

And what we've recommended is a common-sense

approach that, frankly, the Retirees' Committee virtually came up with by itself, perhaps simultaneously with us because we had done it in other situations, they've seen it as well in other situations, and it didn't satisfy the General Creditors' Committee, and I regret that, but it should satisfy them for now. Your Honor's not doing anything permanent today; we just ask that, at this time, they not be authorized to go forward with a contemporaneous investigation.

THE COURT: Thank you.

MR. LEVIN: Good afternoon, Your Honor. Richard Levin of Jenner & Block for the Retiree Committee.

I want to first thank Mr. Bienenstock for that kind of shout-out there at the end. We did come up with that proposal, and we support it. We think the investigation should take place in the first place by the Oversight Board, and if that is inadequate, as Mr. Bienenstock says, in the minds of the Retiree Creditors' Committee or the General Creditors' Committee, we would be back here seeking further authority.

I'd like to start with just a couple of quick answers to some questions that Your Honor had raised or

that were remarked on, and I have just a few points to make. There's been reference several times to the *Enron* investigation. In that case, there were two examiners because there were two -- there was the parent company, and there was Enron North America, which was a somewhat separate company.

The examiner of the parent company, 15 years ago, cost $100 million. That's public record, and I don't think anybody in this Courtroom would dispute that. So, when we're talking about cost, we ought to have a kind of a sense of order of magnitude that we're talking about here. Other examinations have cost substantial amounts, and as Your Honor is aware, lawyers' rates have gone up at times, and these things have gone up. It's hard to imagine that the cost of an examination would go down.

Second, Your Honor asked about whether the Constitutional debt issue was being raised in any litigation. I believe that's one of the central issues or one of the many central issues, if that's not an oxymoron --

THE COURT: We'll let it go. Go ahead.

MR. LEVIN: Yeah. It's one of the central issues in the COFINA litigation because, as Mr. Despins said, the question of whether the COFINAs were legally

issued has a lot to do with whether they were a work-around for the Constitutional debt limitation.

Third, there's been a -- well, let me go to the few points I want to make, Your Honor. Your Honor also asked what eliminates Rule 2004 in PROMESA. Nothing does. But 2004, as everyone here in the Courtroom acknowledges, is discretionary; it's not mandatory, it's not -- if a party in interest requests an examination, the Court must grant authority.

It is in the Court's discretion, and so the question is in this case: Is it wise now, given the Board's oversight and investigatory powers, to authorize a second investigation? And the Retiree Committee believes that, by coat-tailing on the Oversight Board's investigation, we think that's the most efficient way to proceed and the wisest way to proceed, rather than authorizing two or perhaps three, because if the Court were to authorize the unsecured -- General Unsecured Creditors' Committee investigation, there's nothing to distinguish the Retiree Creditors' Committee. We have the same status, the same standing, the same duties, the same powers, and we actually have a larger constituency in terms of dollars and in numbers of creditors.

And the Retiree Committee Counsel is very

experienced and well-respected for its investigative abilities, having been the Counsel to the examiner in *Lehman*; having conducted the General Motors ignition switch investigation, which was lauded by the Second Circuit; having been the monitor for Credit Suisse under the New York State Banking Commissioner and many other confidential investigations as well.

But our point is: As experienced as we are at this, we don't think we should be competing on a first-come, first-served basis, who gets here first, to do an investigation. It makes sense, as Mr. Bienenstock said, for Congress to have authorized the Oversight Board to lead this process.

THE COURT: So, let me ask you this because you always -- everybody always walks in here with new information. No matter how much I read, you have more information for me. What's your understanding of the timeline of the Board's investigation, the scope and your involvement in defining any of that? If you've reached an agreement or, at least in principle, you've talked about how you're going to work with the Oversight Board's investigation, what's your understanding of the timeline of that investigation, the scope of that investigation and your Committee's role in it? Just give me an overview.

MR. LEVIN: We don't have a sense of the timing yet. I think we have to wait for the Board -- I hope next week and -- the Board has been pretty quick in selecting professionals in other contexts. They put an RFP out, the proposals come in a week or ten days, and the Board, within the next week, typically selects. And so they're due tomorrow. I would expect they would select sometime next week, and then we can get started on that. So, beyond that, I don't have a sense of the timing.

As far as the scope goes, I think you heard Mr. Bienenstock's statement about that, and we support that. But I want to go a little bit broader than what Mr. Bienenstock said. I'm sure he would agree with me, having thought about it in the heat of the moment up here. It's not only a question of looking, in the Board's investigation, looking at potential causes of action against third parties, but one of the important things that the Board must do in its role as the Trustee in this case is object to claims. Mr. Despins said part of the investigation might be for the purpose of objecting to claims. That's the Board's responsibility.

I'm not saying that nobody else may object to claims. The statute does permit that in certain

circumstances, but I think Congressional intent here is clear that the Board's investigation has to include that as well.

And in connection with our cooperation with the Board's investigation, we would encourage that because, if the amount of the claims get reduced because for some reason they are objectionable or improper or shouldn't be allowed under Section 502 of the Bankruptcy Code, which is incorporated, then we would -- then other creditors will fair better because the limited pie would go a little bit further because there will be fewer mouths to feed. Sorry for the metaphor. So, we think the Board's investigative authority is broad. We would encourage it to use that for all of those purposes, and that's how we think the cooperation would work here with the Board's investigative authority.

Now, the General Committee has also authorized -- has offered to share results but has not been so forthcoming as the Board has in terms of consultation in advance of conducting the investigation, and that's another reason we favor the Board's leadership in this. And the General Committee has been offered that same participation in the Oversight Board's investigation, and since one is

offering and the other is offering, it's more a question of who should control, and I think it's pretty clear, as Mr. Bienenstock said, that Congress intended in PROMESA that the Board would lead this process, that Congress gave the Board tremendous powers throughout the case and especially on this one in the investigatory role.

I'd also ask the question, Whom the General Committee is trying to protect? Section 1103(c)(2) of the Bankruptcy Code on which the General Committee relies gives the Committee investigative authority, true. Mr. Despins cites that correctly.

But Section 1103(c)(5), the last in the powers given to the Committee, tells the Committee it has the power to "perform such other services as are in the interest of those represented." So, other services in the interest of those represented, such other -- seems to be a limiting concept on the powers listed in Paragraph 1 through 4. I should note Paragraph 4 is authority to request the appointment of a Trustee. Obviously, that doesn't apply in this case, at least a general Trustee. So, I think the applicability of Section 1103 in this context has to be read in the context of PROMESA, not in the context of an ordinary commercial Chapter 11 case.

And the Committee's authority is limited to service for those that it represents, and that is, as I said before, the general creditors, which, based on Judge Swain's order last week on the GIO bondholders' motion to expand the Committee, suggests that their representation doesn't even include the GIO bondholders. It certainly doesn't include the COFINA bondholders. The Board has a much broader mandate than the Creditors' Committee.

So, with those points, Your Honor, we favor Mr. Bienenstock's approach and the Board's leadership, and we urge the Court to deny the motion on that basis.

MR. BRADY: Good afternoon, Your Honor. Robert Brady of Young Conaway Stargatt & Taylor on behalf of Popular, Inc.; Popular Securities, LLC; and Banco Popular of Puerto Rico.

Your Honor, we filed two pleadings in connection with this motion: One, an objection and reservation of rights with respect to the Committee's Rule 2004 motion; and we also join in certain aspects of the Oversight Board's objection. Your Honor, like many of the objectors, the Popular entities agree that the Oversight Board is the appropriate party to lead this investigation.

Congress provided that important investigatory

power would be invested in the Oversight Board, and Your Honor, we do not join in these objections because somehow we believe that the Oversight Board will be less thorough or take it easy on the financial institutions; we raise the objection because there should be one coordinated discovery process, not as many as three separate investigations.

That, Your Honor, is more cost-effective and efficient for the Commonwealth, and the Popular entities are corporate citizens of Puerto Rico, they are creditors of the Commonwealth, and, as such, they have an interest in reducing costs in this case. But a coordinated process, Your Honor, also is more efficient and cost-effective for the Popular entities. And both the rules of discovery and case law regarding Rule 2004 make it clear that that's a valid consideration for the Court to prevent burdensome and unnecessary discovery.

Despite the Committee's assertions, Your Honor, that multiple investigations on the same issues happen all the time, that is not the norm in cases under the Bankruptcy Code. This to us really seems more about control, who will control the investigation, and the UCC is attempting to control it by being the first to the Courthouse. However, Congress has already spoken.

The Oversight Board was given this authority and the power to conduct the investigation, and there's no doubt, and you've heard it today, that they'll do so in coordination with the Committees. As you've heard, Rule 2004 is discretionary, and we think the Court should exercise its discretion to prevent duplication of effort and expense.

The Popular entities recognize that an investigation will happen. Despite the inflammatory tone and the innuendo in the UCC's motion and reply, the Popular entities are confident that, after discovery, it will be clear that my clients did nothing wrong. But that process should be one coordinated process, and the Popular entities, as indicated, have reserved their rights to raise objections to whatever discovery is ultimately issued.

Now, if the Court is inclined to allow the Committee to commence a Rule 2004 exam, we think they've really put the cart before the horse here, Your Honor. They refused a meet-and-confer before filing the motion and opted for a process where they get authority and then meet and confer on the scope, but as Judge Bernstein found recently in the *Sunedison* case -- and this is 562 BR 243, it's a January, 2017, opinion -- "The concept of proportionality and concerns

regarding the burden on the producing party are relevant to the determination of cause under Rule 2004."

So, again, if Your Honor is inclined to let the Committee commence a 2004 exam, all rights need to be reserved, including that any particular request, that they have not established cause based on the proportionality test. So, again, Your Honor, we ask the Court to deny the motion, allow the Oversight Board to lead a coordinated effort in this regard, and if the Court is otherwise inclined to allow UCC to proceed, that all rights be reserved for the parties who are the target of the 2004.

THE COURT: Thank you.

MR. CROWELL: Good afternoon, Your Honor. Nick Crowell from Sidney Austin for Santander Puerto Rico, Santander Asset Management and Santander Securities.

I'm not going to take long here because I think most of the arguments I was going to make have already been made repeatedly. We would just support the investigation by the Board. We're not afraid of an investigation by the Committee, as they suggest. We think Mr. Bienenstock will be as painful as they would be, and we think that there should only be one

investigation, however.

The Committee wants to be a free-ranging sheriff here, looking for any wrongdoing, but really they're a sheriff without any weapons because they cannot bring any claims, they're not authorized to do so. So, what is the point of a feed-grab and a feed-grab that's going to result in a lot of costs to the estate? The Oversight Board has the authority. Let them proceed. They say they're going to proceed. We can always re-visit later, Your Honor, if they haven't done enough, if people don't think that they've done enough.

One other thing I would just point out that makes us a little bit different than Popular is that my client is also the subject of a class action from bondholders, some of the very creditors that the Committee purports to represent. And I'm not asking you to feel sorry for my client, but I do ask that you recognize that resources are limited, and if we are going to be subject to three or possibly four different investigations by the Retiree Committee, it will make their jobs that they actually have to do and get paid for impossible.

So, again, we would agree with what has already been said here today, which is: Let the Oversight Board do the investigation, let them coordinate it, let

there only be one investigation, though, Your Honor.

Thank you.

THE COURT: I don't have to give your client my lecture on securities litigation, which is you don't have to review the same documents that are privileged for each separate lawsuit? You just review them once.

MR. BRADY: Understood, Your Honor.

MR. SEIDEL: Good afternoon, Your Honor. Martin Seidel, Willkie Farr & Gallagher, for the COFINA Agent. I'll be very brief.

We take no position with regard to whether the 2004 investigation should take place, but I want to be clear, since both Mr. Despins and the FOF Counsel used me as a prop, if you will, used my client as a prop, if an investigation takes place, to the FOF point, we're not coordinated with them. In fact, they're our adversary. They are the COFINA -- they are the GIO Agents in the COFINA-GIO dispute. So, we're not coordinated with them on their 2004 investigation. And while they may give us everything, I don't want that to prejudice our rights to discovery in the COFINA-GIO dispute.

Second, to Mr. Despins' point about giving us everything, given that the GDB, one of the targets here, is the parent entity of COFINA, we want to make

sure that there's no waiver of privilege in anything that's provided to Mr. Despins, should a 2004 investigation go forward.

Thank you very much.

THE COURT: Okay. Do you want to respond? Let me tell you -- let me give you some initial thoughts, and then I'll let you all talk some more.

I feel like the motion was filed at a time when the Board had really not made any efforts to go forward with this investigation. No blame on that. Reality. I feel like that it was also made at a time before the COFINA-Commonwealth stipulation was entered into as to how that would go forward. And I think a lot has been -- a lot has changed.

I'm balancing two very real concerns. The Board's investigation is not mandatory. There are no time limits, there are no defined objectives, and there are no specific parameters that have to be met in the Board's investigation, and I -- until the Board actually has somebody who's doing this investigation, all I've heard about legitimately is that the Board are individuals who don't have time to do anything other than, you know, what they're doing.

So, I think bringing in the investigator changes the dynamics, but I still have the concerns that the

scope of the investigation is just -- I don't know where that will actually fit in, in reality, other than in goodwill. I don't know how that would fit into the investigation that the UCC actually wants to and should be able to conduct.

I have a lot of concerns about the financial -- financial costs? No? Talk about a phrase that's awful. -- about the costs of this investigation and on the burden of those who are going to be involved in it. The need for cooperation is huge, but I don't want to stall things while the Board is kind of getting its investigation started.

So, I'm trying to figure out if there are topics that can go forward. Do I say to the UCC, You need to coordinate in the COFINA-Commonwealth litigation, come up with a plan on, How do you share that information and go forward with that? Because I gather that's going forward regardless of the investigation; right?

So, it seems to me that that's assignment one, is, How does the Commonwealth-COFINA discovery go forward, both in the context of the adversary proceeding as well as perhaps additional topics that would be covered by the UCC just as a Creditors' Committee?

I think the second task has to be at least an

effort by whoever is selected by the Board to see if agreement can be reached on a way to coordinate an investigation by the Board and the UCC and to determine whether or not there are topics that are just easily divisible or not, you know, dividing the responsibility, making sure there's no overlap. There may be topics that the UCC is concerned with that the investigator does not have a high priority for. I just don't know. And I feel like that opportunity -- we should take advantage of that opportunity.

Now, I do say that, but that's not in my notes because this is new, that somebody is being actually appointed. You know, I mean, this is all happening fast. And you may very well come back, and I understand some skepticism as to whether actually somebody will be appointed soon and whether it will happen soon, and so I think we need to set some dates for this real coordination, and if it doesn't happen, I guess my underlying order is that I don't see anything in PROMESA that makes the Oversight Board's investigation manditorily exclusive. I think we all agree with that, and I think we all agree that the UCC 2004 investigation is authorized by PROMESA, within my discretion; okay? So, I don't have, as a matter of law, that either or both of them can -- is ruled out.

But on the other hand, neither of them is mandatory, and I just don't have a sense of how real -- given that they have different overarching concerns, I think there are different timelines that may be involved, I think there may be different priorities that are involved, and it may make sense to allow the UCC Committee -- the Committee to go forward in certain areas while the investigation of the Board goes forward in others. I just don't know.

So, I'm also -- I do have statute of limitation issues here, and I don't quite know where they fit in, which is sort of my big question mark on my paper going, Where does the statute of limitations fit in on this? But maybe that comes up more in a specific objection or not. But I think that the Committee needs to phase this proposed investigation even if you were given free rein. I think it's too big. It's too big, it's too amorphous; and, frankly, I can't tell where it interferes with other adversary proceedings and, frankly, the general proceedings of the whole PROMESA.

So, the problem with thinking out loud is you're all writing it down, and I'm thinking about it, but those are the -- I need to have a way of going forward that makes sure that as much coordination as possible happens, and I want to give the Board the opportunity

of engaging in that conversation with the UCC, but I want the COFINA-Commonwealth discovery to go forward. So, do I send you all -- because you all negotiate so much better outside the room here. Do I say to you, In the next couple of weeks, you submit a schedule to me, a proposal, in a week you do it? All right. That having been said, now you can object to everything that I've just said.

But I've not given you a lot of time to think about all of those.

MR. DESPINS: No. So, let me -- I just want to hit some points, and I will come back, I promise, on all of your points. But the first point is: No one has said that there's any case where a Court has directed a -- or denied a 2004 based on an examiner being appointed. People have said that's not the norm, and Mr. Bienenstock said, Yeah, but the Judge threatened us, but there's -- at the end of the day, he got his order that said, You're entitled to do your 2004 examination. After that, people get together, and they negotiate a protocol. I'm all for that. Of course that should happen. But he and the others did get an order that said, Your 2004 is authorized, and the Judge did say, You will coordinate, as you just indicated. So, that's just -- that's not disputed.

So, let me -- one thing I did not do and I wanted to mention is that we focused on three entities, GDB, Santander and Banco Popular, but there are many other entities involved. If you just want to Google "UBS Puerto Rico," you'll find all sorts of SEC actions involving these entities.

And there, it's possible that the Board has no conflicts. I mean, I wouldn't -- you've read our papers, and you know why we are concerned about the Board being involved. It's not only because Mr. Carrion, for example, his family founded Banco Popular; it's also because there are two of the Board members that are in that chart about the revolving doors. And when Mr. Friedman talks about FOF believes this, FOF believes that, his clients are exactly -- they're not on that chart because we would have -- the chart would be illegible, but his clients are in the same position. They are all former -- or not all; the senior people are all former Santander people, Judge; okay? So, let's understand that. It's either Banco Popular, Santander, all the same.

So, my point is: There are three entities that are in the revolving-door business, these three, GDB, Banco Popular, Santander. There are others that also sold bonds on the Island, and I don't want to single

UBS out, but there are many others. So, you talked about a potential outcome here. Let the Board, you know, hire a god next week. Mr. Bienenstock said he was hopeful. We have no idea who that person is. I'm sure he doesn't have any idea either.

And Mr. Levin, on behalf of the Retiree Committee, has signed off on that, but he has no idea what the timeline is either. Let them hire god, and god can jump in and follow on what has been done with the Banco Popular, Santander and GDB, and he can do that for all the other institutions. I am hereby telling you, we will not do any of the other -- we'll check to make sure they're thorough in what they are doing, but we will not take the lead on that because there is no conflict there, meaning the Board members have a conflict on these three entities, and that's why we started with that.

THE COURT: But that's the conversation that I want you to have with -- assuming that someone is selected in the near future, because I do recognize that it's not going to go on forever, but if somebody was appointed next week and given a week to read the papers, that is the kind of conversation that I would expect that you would have, that you would say, For these three entities, we really feel there's too big a

conflict for you to take the lead in this investigation, but for these ten entities, go for it. Maybe there would be agreement, maybe there wouldn't. I don't know.

MR. DESPINS: But you're assuming for a second that those discussions did not take place. All right. I'm not going to say more than that.

THE COURT: Well, I don't know.

MR. DESPINS: But the point is we have been at this for a while. You know, the issue of objecting to claims is key. Mr. Levin lectured us about the Bankruptcy Code, but 502 of the Bankruptcy Code says any party in interest can object to a claim. And there are billions of dollars in claims at stake. We need to get the investigation yesterday, Judge, we need to --

THE COURT: But you have the COFINA-Commonwealth, which is a huge part of this investigation, and there's no reason why that can't get started.

MR. DESPINS: That's discrete. It deals with the COFINA. And by the way, you're right, we will do that; but there's another part of this, which are the GIO bonds, the general obligation bonds, which is something like $17 billion. And there are other bonds as well, but I mean that --

THE COURT: Right, and I don't under -- I don't know, as I'm sitting here, what the scope of the discovery is in that case or where that is or whether the Committee's going to come and tell me they need to do the discovery.

MR. DESPINS: Well, there's --

THE COURT: I mean, I take that back. Where's the issue? When I asked you whether the issues that you were raising were being held in -- were being raised in -- like, the debt limit, is that going to come up in the GIO proceeding?

MR. DESPINS: No. The GIO proceeding, they're saying, I'm secured -- I'm speaking as a BIO bondholder now -- I'm secured, I'm entitled to priority.

THE COURT: So that they're -- but is somebody going to challenge that?

MR. DESPINS: Well, no, because -- I'm sure somebody like the Board will say, No, you're not secured; or, no, you're not entitled to priority for the following reasons. I don't know that, but I assume that's going to take place.

But there's a totally different issue, which is, Have some of these bonds been issued in violation of the Constitution, debt limit and otherwise, and that applies to other bonds as well, that, that

investigation should have happened two months ago. And so that's why waiting for god or waiting for a new -- somebody who they don't even know who that is, to be appointed or fully -- Mr. Bienenstock was very honest, he said hopefully. Hopefully, I don't know what that means.

And so I -- right now, I think the Court should direct us to those three entities, to these parties to meet and confer with us. By the way, they'll be in document production, they'll never have to produce it twice, meaning the same document. They say it's burdensome. They will not have to produce it twice. And we will coordinate with the COFINA Agent to make sure they're satisfied. If they're not happy with the document requests, we'll make sure that they don't have to do that again, so I can represent that to the Court.

But as to those three entities, while we're waiting for this god person to be appointed, we should -- the Court should direct the parties to meet and confer and to come back to Court with an agreed- or not-agreed-upon order on the production of documents only with respect to the issues we're seeking, Your Honor.

And we know that the document production requests are sometimes too broad, but that -- let's put

it this way: When is the last time you've ever seen a document request that was accepted by the target ever? So, there's no -- you know, so therefore, this argument that it's too broad, yes, I can make arguments that it's too broad as well, but the point is the parties should meet and confer. This has started probably more than a month ago at this point. We filed our motion on July 21st. They've had this. We can sit down with them and come back to Court, and if god is found and she or he can jump in and be involved and can convince the Court that he or she should be doing all of it, so be it. But in the meantime, we don't want to waste time, lose the momentum we have. I think that's very important, Your Honor.

THE COURT: Thank you.

MR. KIMPLER: Good afternoon, Your Honor. Kyle Kimpler from Paul, Weiss, Rifkind, Wharton & Garrison, on behalf of the Ad Hoc GIO Group.

I just wanted to quickly, if I could, respond to a few of the comments. You were asking about, What is going on in the current GIO adversary proceedings, how does that relate to the discovery that's being sought here?

I just wanted to correct the record on two points really quickly. There were a couple of

references I think by other Counsel that perhaps the Committee is representing bondholders or is representing GIO holders. That is not the case, and I think that is obvious by what you just heard, which is that they're actually looking to invalidate certain GIO bonds based on a Government issue.

That's obviously an issue that's not for today on the merits, but I would note that, as Mr. Despins just suggested, the Oversight Board has, in the current adversary proceeding going on between the GIO holders and the Oversight Board, raised all types of issues regarding the status of GIO debt, whether it is secured or whether it has priority, et cetera. They have not raised this issue. I will suggest that, that is a target is not a valid argument, and our position is that this would be nothing but a waste of money, to look into these issues.

THE COURT: Meaning the debt limit?

MR. KIMPLER: The debt limit issues, yes. I would assume the Board, in preparing all of their arguments, would have considered this one and has decided not themselves to bring it; and, therefore, we think it would be wasteful for the Committee to pursue that.

THE COURT: Okay.

MR. FRIEDMAN: Thank you, Your Honor. Your Honor, it's Peter Friedman from O'Melveny.

I just wanted to make two quick points. The issue was raised, that last issue was raised pre-petition in the Lex Claims, which were subject to the automatic stay as a defense by the people who are in here this morning. The COFINA seniors did challenge the validity of some bond issuances, and so it's certainly lurking out there and a matter of --

THE COURT: Didn't I read it somewhere?

MR. FRIEDMAN: Subject to the automatic stay. And certainly we would be willing, as a party that will clearly be the recipient of discovery requests at GDB, to sit down with both Counsel for the Commonwealth and COFINA Agents and come up with a discovery schedule that involved -- in that matter as part of the overall matter that will be litigated between the parties.

You know, we'll probably have some of the same issues that have arisen already and have been before you with respect to deliberative process, et cetera, but we're certainly willing to do what we've done in the past, which is negotiate appropriate schedules and, you know, litigate in good faith where necessary and compromise where appropriate on discovery connected to a specific live controversy where both sides are

involved and we're not getting whipsawed.

Thank you, Your Honor.

THE COURT: Thank you.

MR. BIENENSTOCK: Your Honor, thank you. Martin Bienenstock for the Oversight Board.

I just wanted to respond briefly to a few of the comments made in response to Your Honor's suggestion. First, as to the last comment by Paul-Weiss for the GIO holders, in the adversary proceedings that are pending, the current motion practice pertains to things that can be done on the face of the papers. I would not infer from that any decision to forego defenses such as debt limit, et cetera. It's simply too early.

But the important fact, Your Honor, is what the Committee said, which is basically that he'll take care of the investigation, see you all later. And Your Honor may not think that from the way it was portrayed, but that's what they were saying, and it's wrong.

I didn't spend time earlier responding to the mud that they threw into their papers because I didn't want to dignify it. But suffice it to say, it was mud. The Oversight Board members were screened by the White House, I'm talking about the Obama White House; they were appointed in August, 2016. As hard as they tried,

they could not come up with anything against any of these seven members other than some of them worked for, in prior years, some of the institutions involved. None of them, though, were on the Board's special committee, even though that would rightfully not disqualify them.

But the important thing for Your Honor to know is that all indications are that, if these investigations are going to create meaningful sunlight or create causes of action beneficial to the Commonwealth, the two most promising are Banco Popular and Santander, and there is no way that this Committee should lead that investigation. And what they've tried to do is to throw mud as a reason to displace the Board that Congress put there to lead that investigation.

All that said, we think Your Honor's suggestion was the right one. We will have an investigator out front for this process. He should meet with both Committees and come back to Your Honor and report as to whether they could agree on a protocol going forward or what the snags are.

THE COURT: And what kind of timeframe do you think would be reasonable for that?

MR. BIENENSTOCK: I think what Your Honor said is right. The Board can appoint someone next week, and

Your Honor said give them a week to read the papers. So, if we come back here in three weeks, that should be perfect.

THE COURT: And do you have any comment on whether the COFINA-Commonwealth discovery should go forward?

MR. BIENENSTOCK: Oh, it absolutely should go forward, and the -- as Your Honor knows, the General Creditors' Committee, the UCC, is the Commonwealth Agent and should go forward. I disagree entirely with the Committee and agree with Your Honor about being able to use Rule 2004 against third-party witnesses in that litigation.

As Your Honor can imagine, if the Commonwealth Agent, as a Plaintiff in that litigation, notices discovery under Rule 2004, number one, the other parties to that litigation aren't even invited to show up; number two, except for contradictory statements, that discovery cannot even be used in the adversary proceeding.

So, the only thing the Commonwealth Agent can do is take classic discovery under the Federal Rules of Civil Procedure, not under Rule 2004. If it tries to use 2004, number one, the witness will object; number two, the other parties will object, and so what was

said about they're allowed to do it for third-party witnesses is demonstratively wrong.

THE COURT: And what's the schedule of this -- I'm sorry. I just don't remember the details of your stipulation of how COFINA-Commonwealth is going forward.

MR. BIENENSTOCK: Well, the schedule was that, by a date that's coming up within I think the next week or two, the litigation has to be commenced, and it has to be orchestrated so that a decision can be rendered by December 15 unless Judge Swain sends it for cause.

THE COURT: So, the litigation is expected to be commenced soon?

MR. BIENENSTOCK: Very soon.

THE COURT: Very soon. Okay.

MR. BIENENSTOCK: Thank you.

MR. LEVIN: I'd like to answer two or maybe two and a half questions that the Court asked. You'll see why it's a half.

The first one is the statute of limitations issue. When it comes to objections to claims, the statute of limitations issue is not relevant because a claim can be objected to that it's --

THE COURT: Right.

MR. LEVIN: -- not enforceable at any time, as

provided in the Code. So, it's not like an affirmative cause of action against a third party where you worry about a statute of limitations.

The other, as to affirmative causes of action against third parties, Section 108 of the Bankruptcy Code applies in PROMESA, and that provides a two-year extension of any statute that hasn't expired by the petition date. So, in terms of getting the investigation done, we've got until May, 2019, to bring causes of action. I think none of us in this room wants to take that long, but at least expiring statute of limitations is not a problem against third parties. That's one question.

The second question, How does the COFINA litigation discovery proceed at the same time as the 2004? Mr. Bienenstock addressed that to a degree. There is a tentative draft schedule. Mr. Bienenstock is correct, the stipulation contemplates a decision by December 15 by the Court. The draft schedule contemplates discovery over the next 60 days.

The Committee, which is the general -- the General Committee, which is going to be the Commonwealth Agent -- is the Commonwealth Agent is going to be very busy with that discovery, getting a tremendous amount of information relating to the COFINA

bonds and their issuance and their Constitutional validity and all of those matters.

If Your Honor is looking for one bite to take that's digestible, that certainly is, for the next 60 or so days, while that discovery proceeds, without needing to expand the Committee's duties into 2004 exams where the Oversight Board's investigation's counsel will be up and running long before that time, and the Committee will have plenty to keep it busy between now and then.

Those are the two and a half questions.

MR. DESPINS: Your Honor, the case I couldn't remember two hours ago was *WaMu*. In that case, the Court held that the argument that Mr. Bienenstock made that, when there's a pending proceeding, you can't use 2004, only works for the people who are the Defendants in that litigation. That's the *WaMu* case. It's cited in our reply.

As to the Retiree Committee, Your Honor, you have to look at the objection they filed. The objection said, Oh, we don't like the main Committee to do this. We have asked them to be co-Plaintiffs, if you will, and we said no, there's enough people, you know, involved in this. We'll give you everything we get at the same time and all that.

And everything that they said since then has been in furtherance of that, which is I think they would be bizarrely happy if you denied the motion because that means that our Committee would not take the lead on this, and that's -- everything they're doing has to be seen through that prism.

THE COURT: Well, that's involving a level of negotiation that's actually beyond --

MR. DESPINS: Understood. But just look at the objection they filed, and you'll see what this is all about.

THE COURT: This is what I want to happen: I want the COFINA-Commonwealth litigation to be -- to go forward as soon as possible and to be coordinated between the adversary proceeding and any extra in the 2004 investigation of those issues.

I want the Board's investigator to coordinate with -- to meet and confer with the Creditors' Committee to determine whether or not there are a protocol to go forward and coordinated efforts and whether or not there are certain areas that should be spun off to be pursued, for the lead to be either the Creditors' Committee or the investigator. You know, are there certain areas that should be divided among them, and is there a way to coordinate the

investigation?

That also requires for me some timeline of how I see the investigation going. In my head, this has to be phased somehow, and I don't know the appropriate way to do that. I'm going to put that on the list of things that should be discussed between the investigator and the UCC, but if there's no agreement on any of these, you can each tell me where you're standing, and then I'll decide whether or not I require coordination or not, but the report to me also has to indicate whether or not discovery is being done in connection with major adversary proceedings that this would run into or not.

Does this make enough sense, or do I have to say it again?

MR. LEVIN: No.

THE COURT: I will put it into something, or can I ask you guys to put it into something? What's the best way to do this? Do you want me to enter an order that explains this, or should I ask I guess both of you to submit me a proposed order of this agreement? Everyone's staring at me.

MR. DESPINS: I'm happy to work with Mr. Bienenstock.

THE COURT: Can you do that?

MR. BIENENSTOCK: Sure.

MR. LEVIN: Your Honor, in your reference to what needs to be done in terms of coordinating, we'd ask that the Retiree Committee be included with the General Committee in that process and, obviously, the COFINA Agent as well.

THE COURT: The COFINA Agent needs to confer with the Committee -- right? -- so that's a given.

MR. FRIEDMAN: And we're actually in the process of that already, Your Honor.

THE COURT: So that's a given.

I think, for the Retirees' Committee, I have no objection to you participating with them, but I think that the dispute here is between the Board and the UCC because you've agreed to either go with one or the other, so...

MR. LEVIN: Well, true, Your Honor. But if you're in effect authorizing the General Committee to bring this discovery, then you're encouraging us to file a singular motion so we get similar status, which I don't think is constructive to the process, that's why we didn't do it, but that's why we should be at the table.

THE COURT: I personally think you're very nice, I'd love to have you by the table, but --

MR. LEVIN: Thank you, Your Honor.

THE COURT: -- I don't want to add another requirement here. The first thing I want is a proposed order that says that the parties will meet and confer and the like. When it comes down to then having the meeting between the Board and the UCC, I think that you have -- the retirees have indicated that the Board is really -- you're willing to go to with the Board's description, so if the parties cannot reach an agreement and they file with me their disputed positions, you can file something --

MR. LEVIN: Thank you, Your Honor.

THE COURT: -- okay? But you don't need to be part of yet another late night phone call.

MR. LEVIN: We will coordinate with the Board on that, then.

THE COURT: Okay. So, I guess what I'm saying is I would like a proposed order by the -- what's today, Tuesday? -- so by -- in the next couple of days, 48 hours. You're not flying far? Everybody's flying local. Within three weeks, where does that take us?

THE CLERK: September 12.

THE COURT: So, by September 12th, I'd like a status report. I would prefer a joint status report between the Board and the Committee on whether or not

you believe an agreement can be reached or has been reached or whether or not you think I need to rule further. And if there are areas in dispute that you would like me to focus on, you can do that.

I'm not ruling on the motion; I'm continuing the motion. Okay?

MR. DESPINS: Understood.

THE COURT: Everybody's kind of nodding, so I'm going to say okay.

MR. LEVIN: Yes, understood, Your Honor.

THE COURT: I'm going to get off the bench before I cause any more problems.

MR. FRIEDMAN: Your Honor, we reserve our rights with respect to a proposed form of order.

THE COURT: Say that again.

MR. FRIEDMAN: We just wanted to reserve our rights on the record to any proposed form of order and ask for the right to be heard in the future with respect to cost issues, et cetera.

THE COURT: No, this isn't waiving anybody's rights.

MR. FRIEDMAN: Thank you, Your Honor.

THE COURT: And if you don't reach an agreement, maybe in the status report, you can also -- I will determine whether or not there should be an objection

period, depending on how much everybody has spelled out their positions or not.

MR. FRIEDMAN: Thank you, Your Honor.

THE COURT: Okay? All right. Now should I go? I'm going to go.

Thank you all.

THE CLERK: Court is in recess.

(Adjourned, 3:16 p.m.)

C E R T I F I C A T I O N

I, Debra D. Lajoie, RPR-FCRR-CRI-RMR, do hereby certify that the foregoing pages are a true and accurate transcription of my stenographic notes in the above-entitled case.

/s/ Debra D. Lajoie

8/23/17